
IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH - CENTRAL DIVISION

ANDERSEN MANUFACTURING, INC., an
Idaho Corporation,

Plaintiff,

vs.

DIVERSI-TECH, CORP., a Utah
Corporation,

Defendants.

**MEMORANDUM DECISION AND
ORDER**

Case No.: 2:05-CV-923
Judge Dee Benson

Plaintiff requested a preliminary injunction against Defendant regarding an alleged infringement of Plaintiff's patent for aluminum trailer hitches. The Court denied Plaintiff's motion and Plaintiff moved to reconsider, which motion the Court also denied. Defendants now move the Court to order an award of attorneys' fees incurred in responding to Plaintiff's motion to reconsider the Court's initial denial of Plaintiff's motion for preliminary injunction. Defendants maintain that Plaintiff's motion to reconsider was without procedural and substantive basis and constitutes unreasonable and vexatious multiplication of proceedings so that an award is warranted under both 28 U.S.C. § 1927 and 35 U.S.C. § 285.

Defendants' motion was filed July 27, 2007, the same day Plaintiff filed a notice of appeal. A district court and a court of appeals do not ordinarily exercise jurisdiction over the same case at the same time: "The filing of a notice of appeal is an event of jurisdictional significance—it confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal." *Griggs v. Provident Consumer*

Discount Co., 459 U.S. 56, 58 (1982) (per curiam). The filing of certain post-trial motions, however, including a motion for attorneys' fees under Federal Rule of Civil Procedure 54, divests the appellate court of jurisdiction. *See* Fed.R.App.P 4(a)(4)(A)(iii); Fed.R.Civ.P. 54; *Stone v. I.N.S.*, 514 U.S. 386, 402–403 (1995). In the interests of judicial economy, however, the Court will await the resolution of Plaintiff's appeal by the Court of Appeals for the Federal Circuit before deciding a motion for attorneys' fees. Defendants' motion is accordingly denied without prejudice.

IT IS SO ORDERED.

DATED this 15th day of August, 2007.

A handwritten signature in black ink, reading "Dee Benson", written over a horizontal line.

Dee Benson
United States District Judge